

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3136 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 - Yes

2 to 5 - No

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MAKANBHAI RAGHABHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR DD VYAS for Petitioner

MR.UDAYAN BHATT, ASSTT. GOVERNMENT PLEADER for Respondent

No. 1  
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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 16/12/97

ORAL JUDGEMENT (Per: C.K. Thakkar,J.)

This petition is filed for an appropriate writ, order or direction quashing and setting aside the notifications dated March 3, 1987 issued under Sec.4 of the Land Acquisition Act, 1894 (hereinafter referred to

as 'the Act') as also notification under Sec.6 of the Act, dated March 29, 1989.

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#. The case of the petitioner was that he was having agricultural land at Village Kabilpur in Taluka Navsari, District Valsad bearing survey no.138 admeasuring 1 hectre, 50 acres, 75 sq.mts. A notification was issued under Sec.4 on March 3, 1987 by the Collector, Valsad, intending to acquire land for public purpose of rehabilitating landless agricultural labourers covered by Daman Ganga Canal Project. It is asserted by the petitioner that he filed objections against the acquisition on April 11, 1987. A copy of the said objections is also annexed at Annexure "B" to the petition. On May 4, 1987, the Collector, Valsad, informed the petitioner that the objections submitted by the petitioner have been forwarded to Assistant Collector, Navsari for disposal. According to the petitioner, however, without considering those objections, a notification under Sec.6 was issued on March 9, 1988. Paragraph 2 of the said notification reads as under:

"And whereas the Collector of Valsad empowered under section 52(A) of the Land Acquisition Act, 1894 is satisfied after considering the report of the Assistant Collector, Navsari under sub-section (2) of Section 5-A of the Land Acquisition Act, 1894 (1 of 1894) that no objections have been taken by interested persons and that the said land is needed to be acquired at the public expense for the public purpose specified in the Schedule hereto." (Emphasis supplied)

#. When the petition was filed and it came up for admission on June 23, 1988, a Division Bench issued notice and also granted ad-interim injunction restraining the respondent from taking possession of land. Direct service was ordered. After hearing the parties, on March 5, 1991, rule was issued and ad-interim relief was continued till further orders. Today the matter is called for final hearing.

#. We have heard Mr.D.D.Vyas, learned senior counsel for the petitioner and Mr.Udayan Bhatt, learned Assistant Government Pleader for the respondents. Mr.Vyas raised three contentions.

(1) There is either non-consideration of the

objections submitted by the petitioner by the respondents or non-application of mind by them of those objections.

- (2) The proceedings were vitiated inasmuch as only Collector can consider objections submitted by the owner. He has to afford an opportunity of hearing. As everything was done by Assistant Collector, they were without jurisdiction.
- (3) The power under the Act has been exercised malafide and in colourable exercise of power. Ostensibly it was stated that the land was required for public purpose, i.e. for rehabilitation of persons affected by the Daman Ganga Canal Project, in reality, it was not so.

#. Mr. Udayan Bhatt, learned Assistant Government Pleader, on the other hand, supported the action taken by the authorities. He submitted that the jurisdiction under Article 226 of the Constitution in such matters is limited and when in bonafide exercise of power, the action is taken by the authorities, it cannot be said to be contrary to law.

#. In our opinion, the petition deserves to be allowed. Since, the impugned action is liable to be set aside only on the ground that there is non-consideration of objections submitted by the petitioner or non-application of mind to the said objections, we do not intend to express final opinion on other two contentions raised by learned counsel for the petitioner.

#. To recall, it was specifically the case of the petitioner that he had submitted written objections against the proposed acquisition after preliminary notification was published under Sec.4 of the Act. The said fact is not disputed even by the respondents. On the contrary, from the reply sent by the office of Collector, Valsad on May 4, 1987 (Annexure "C"), it is clear that the office of Collector had received objections submitted by the petitioner and that the petitioner was also informed that those objections were forwarded to the Assistant Collector for doing needful in the matter. Surprisingly, however, in the final notification under Sec.6, it was stated that "no objections have been taken by the interested persons".

#. In response to the rule issued by this Court, an affidavit-in-reply was filed by the District Deputy Collector and Land Acquisition Officer, Navsari, wherein it was mentioned that the objections were not only received but were considered and that even personal

hearing was also afforded to the petitioner before issuance of final notification under Sec.6. It was further stated that there was a mistake in not mentioning the said fact that objections were received and they were considered. Mr.Vyas, in our opinion, rightly contended that the final notification under Sec.6 was not issued by the District Deputy Collector and Land Acquisition Officer and obviously he could not have issued final notification. No affidavit is filed on behalf of the State Government which had issued final notification under Sec.6. Thus, either there was non-consideration of objections of the petitioner by the Government which had issued notification under Sec.6 or there was non-application of mind even though objections submitted by the petitioner were placed before it. In either case, the final action is vitiated and must be quashed and set-aside.

#. In view of the foregoing discussion, in our opinion, it is not necessary to express any opinion on the remaining two questions. In the result, the petition is allowed. The notification under Sec.6 dated March 3, 1987 Annexure "A" is hereby quashed and set-aside. Rule is made absolute only to the extent of quashing the final notification under Sec.6 of the Act. In the facts and circumstances of the case, no order as to costs.

Sd/-

(C.K.Thakkar,J.)

Sd/-

Dt:16-12-1997 (R.P.Dholakia,J.)  
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